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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43541
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2015-253
)	
NICHOLAS ADRIAN ROMO,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Romo failed to establish that the district court abused its discretion by imposing an aggregate unified sentence of 20 years, with six years fixed, upon his guilty pleas to trafficking in methamphetamine with a persistent violator enhancement, grand theft by possession of stolen property, and unlawful possession of a firearm?

Romo Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Romo pled guilty to trafficking in methamphetamine (more than 28 grams, but less than 200 grams), with a persistent violator enhancement, grand theft by possession of stolen property, unlawful possession of a firearm, possession of marijuana, and

possession of drug paraphernalia. (R., pp.53, 96-101.) The district court imposed concurrent unified sentences of 20 years, with six years fixed, for trafficking in methamphetamine (more than 28 grams, but less than 200 grams) with a persistent violator enhancement; seven years, with two years fixed, for grand theft by possession of stolen property; five years, with one year fixed, for unlawful possession of a firearm; and 224 days, with credit for 224 days for time served, for possession of marijuana and possession of drug paraphernalia. (R., pp.96-101.) Romo filed a notice of appeal timely from the judgment of conviction. (R., pp.107-11.)

Romo asserts his aggregate sentence is excessive in light of his “challenging childhood,” “amenability to rehabilitation,” and acceptance of responsibility. (Appellant’s brief, pp.6-7.) The record supports the sentences imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant’s probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it

appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The penalty for trafficking in methamphetamine (more than 28 grams, but less than 200 grams), with a persistent violator enhancement, is a mandatory minimum fixed sentence of three years, up to life in prison. I.C. §§ 19-2514, 37-2732B(a)(4)(A), 37-2732B(a)(4)(D). The penalty for grand theft by possession of stolen property is not less than one year, up to 14 years in prison. I.C. § 18-2408(2). The maximum prison sentence for unlawful possession of a firearm is five years. I.C. § 18-3316(1). The district court imposed concurrent unified sentences of 20 years, with six years fixed, for trafficking in methamphetamine (more than 28 grams, but less than 200 grams), with a persistent violator enhancement; seven years, with two years fixed, for grand theft by possession of stolen property; and five years, with one year fixed, for unlawful possession of a firearm, all of which fall well within the statutory guidelines. (R., pp.96-101.) At sentencing, the state addressed Romo's ongoing criminal conduct, his failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions, his high risk to reoffend, and the danger he presents to the community. (8/17/15 Tr., p.7, L.23 – p.11, L.17 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Romo's sentences. (8/17/15 Tr., p.18, L.21 – p.23, L.23 (Appendix B).) The state submits that Romo has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Romo's convictions and sentences.

DATED this 25th day of April, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of April, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 MONDAY, AUGUST 17, 2015

2 * * *

3
4 THE COURT: State of Idaho vs. Nicholas Romo,
5 CRFE-15-0000253. The defendant is present in custody
6 with counsel, Ms. Martin. State is represented by
7 Mr. Stellmon.

8 This is the time set for sentencing in
9 this case. The defendant entered a guilty plea on
10 May 11, 2015, to Counts II through VI: Count II for
11 trafficking methamphetamine, 28 grams; Count III, grand
12 theft, felony; Count IV, unlawful possession of a
13 firearm, felony; Count V, possession of a controlled
14 substance misdemeanor, and Count VI, possession of drug
15 paraphernalia a misdemeanor. The terms were open.
16 Count I was dismissed.

17 Is that the sum and substance of it?

18 MS. MARTIN: Yes, your Honor.

19 MR. STELLMON: Your Honor, I have annotation that
20 he had also pled guilty to persistent violator
21 enhancement, although that's not in the first
22 information.

23 MS. MARTIN: He did.

24 THE COURT: So he also pled guilty to
25 Information Part II. Thank you. Is there any legal

1 cause why judgment of conviction and sentence should not
2 be pronounced of the defendant at this time?

3 MS. MARTIN: No, your Honor.

4 MR. STELLMON: None known to the state,
5 your Honor.

6 THE COURT: I did order a PSI. I've received and
7 reviewed that. Have both parties had sufficient time and
8 opportunity to review the PSI?

9 MS. MARTIN: Yes, your Honor.

10 MR. STELLMON: Yes, your Honor.

11 THE COURT: Mr. Romo, did you read the PSI?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: I did note a couple of errors in the
14 PSI that I would point out that I made corrections to and
15 then I'll ask if the parties have any additional.

16 On page one and on the addendum page one
17 it indicates guilty pleas, Counts II through VII, that
18 should read guilty pleas, Counts II through VI, plus
19 Information Part II.

20 And then on page 16 of the PSI, at the
21 bottom, sentencing database information, talks about 84
22 offenders matching "Mr. Gallegos" information. That
23 should be Mr. Romo's.

24 MS. MARTIN: Page 15 has the same. The first two
25 paragraphs.

1 THE COURT: All right. I'll interlineate "Romo"
2 on that. Any other deficiencies or errors?

3 MS. MARTIN: No, your Honor.

4 MR. STELLMON: No, sir.

5 THE COURT: Does either party contend there
6 should be additional investigation or evaluation of the
7 defendant prior to sentencing?

8 MS. MARTIN: No, your Honor.

9 MR. STELLMON: No, sir.

10 THE COURT: Does the state have a restitution
11 claim?

12 MR. STELLMON: Your Honor, the state requesting
13 \$100 for the laboratory analysis. I believe I provided
14 the court with the proposed order. Counsel has a copy as
15 well.

16 THE COURT: Restitution in the amount of \$100 has
17 been requested. Any objection?

18 MS. MARTIN: No, your Honor.

19 THE COURT: Restitution in the amount of \$100
20 will be entered. If there's no evidence or victim
21 impact, then the state can argue.

22 MR. STELLMON: Thank you, your Honor.

23 Mr. Romo has sculpted his life around
24 crime. He acquires and settles his debt or income by
25 way of criminal conduct. Here we have an incident where

1 a person unknown to the defendant responds to the
2 defendant's inquiry about a cell phone and they arrange
3 a place to meet. The defendant takes issue with some of
4 the communication from this unknown stranger, and when
5 he arrives, there's a confrontation. The cell phone was
6 to be sold -- the asking price was \$200, I think
7 ultimately the defendant threw a wadded up \$100 note out
8 the window of his car to the victim and kept the phone.

9 The victim is terrified. I met with him
10 personally on one occasion. The notes in the police
11 reports indicate he is afraid for his life and is
12 considering relocating as a result of the experience.
13 Whatever it was that happened in that car scared him to
14 the point that he is willing to uproot and relocate as a
15 result of this. I am asking for a no-contact order
16 related to the victim in Count I with no exceptions on
17 that. I've shown counsel a copy that I've prepared. I
18 think it mirrors what is currently in place.

19 When law enforcement ultimately catches up
20 to him, he acknowledges the transaction. He
21 characterizes it somewhat differently but says I have a
22 gun and I have some meth and I have some marijuana at my
23 house. Sure enough he has all of those things. He had
24 the methamphetamine, as he described, as a way of
25 settling a debt. He had sold approximately half of it

9
1 but still had a trafficking amount of methamphetamine.
2 He has been offered many opportunities at
3 rehabilitation throughout the course of his young life
4 and has declined to engage that behavioral training. He
5 is a criminal, and he's the kind of criminal for which
6 the persistent violator enhancement was instituted. He
7 creates victims in our community when he is in the
8 community, your Honor.

9 He was not afraid or not -- not shy to
10 cite to his past criminality and his past associations
11 when dealing with the victim. He told him that he was a
12 gang member from California and that he had killed
13 people for less of an affront than the one the victim
14 unwittingly gave to him.

15 I don't intend to marginalize or minimize
16 the terrors of his youth. It's tragic. It is a tragedy
17 what has happened to him and what he has gone through.
18 He himself was shielded from his father's criminality at
19 a young age, but now he has the opportunity to be
20 forthright with his own children about what his criminal
21 conduct has been and what the consequences of his
22 decisions are and ought to be.

23 There is a popular or common
24 misperception, from my perspective, that prison is
25 essentially giving up on someone. Prison is not giving

10
1 up on someone, prison is putting a person in a stable
2 environment where they can engage in treatment that they
3 have chosen not to incorporate in the community.

4 He is not safe at this point to be in our
5 community, and it is supported by the pre-sentence
6 investigator that he needs to be afforded some
7 rehabilitative tools in a structured setting. And that
8 setting, from the state's perspective, is prison. The
9 structured setting contemporaneously provides the
10 community with a sense of security that it does not have
11 while he is out in it.

12 He's a high risk of reoffense in our
13 community as assessed by the pre-sentence investigator.
14 He is dangerous when he's released in our community.
15 And if IDOC determines at some point that he is fit to
16 be in the community, he needs to be supervised in our
17 community to assure that he doesn't victimize random
18 people as he victimized in this particular case.

19 The trafficking in methamphetamine, as the
20 court is well aware, involves creating additional
21 victims unforeseen, people that are addicted and people
22 that are impacted as a result of the addicts, and he was
23 facilitating that with a large amount of
24 methamphetamine. It comes with a mandatory minimum in
25 and of itself.

11
1 I'm going to ask for the court to impose a
2 sentence, given his prior criminal history, above and
3 beyond that mandatory minimum. I ask the court impose a
4 concurrent sentence of 10 years fixed, plus 15 years of
5 supervision. That puts him right around the age of 40
6 if and when he is able to successfully complete his
7 parole. Perhaps at that point he won't require the
8 supervision that he now requires, but it is apparent
9 that he does require that supervision.

10 On Count III, ten plus four, concurrent.
11 On Count V, a five plus zero concurrent; and then with
12 respect to the misdemeanors, I don't object to credit
13 for the time that he's served on those.

14 Your Honor, our community is not safe
15 while he's in it. His prior criminal history bears that
16 out, as well as the incident at play here and his drug
17 trafficking conviction. Thank you. I believe actually
18 an Count II there's a mandatory fine of \$10,000. I
19 leave any other fine to the court's discretion.

20 THE COURT: Ms. Martin.

21 MS. MARTIN: Thank you, your Honor.

22 Mr. Romo is 26 years old, he grew up in
23 California, as the court read, pretty much raised
24 himself from five to 12 living on the street as you saw.
25 He kind of was taken care of by gang members because no

12
1 one else at that point would take care of him. No
2 excuse for his behavior, and he knows that and he's not
3 asking for an excuse. From day one he said I'm guilty
4 of everything, but I'm not guilty of that robbery and
5 I'm not pleading guilty to something I'm not guilty of.
6 There were numerous plea offers, plead to these and we
7 won't file a persistent violator, we will dismiss the
8 misdemeanors. And he's like no, I'm going to plead
9 guilty to what I'm guilty to, but I'm not pleading
10 guilty to the robbery because I'm not guilty of the
11 robbery.

12 The court doesn't have the preliminary
13 hearing transcript. While we were at the preliminary
14 hearing the alleged victim in this case testified that
15 he got out of the car, that he was in the car with
16 Mr. Romo, and then he got out of the car and went back
17 to his own car to get change for a hundred. The alleged
18 victim's account is not the same as the alleged victim's
19 account in the police reports, nor is it the same as
20 Mr. Stellmon indicates.

21 Mr. Romo, I know we're not here for him to
22 be sentenced on a robbery charge because he's not been
23 found guilty of a robbery charge and it's been
24 dismissed, but the state has spent quite a bit of time
25 and pre-sentence spent quite a bit of time because it

APPENDIX B

17

1 THE COURT: Mr. Romo, do you wish to make a
2 statement to the court?

3 THE DEFENDANT: Yes, your Honor.

4 I would like to show you that I do
5 acknowledge my actions, and I apologize for any
6 disrespect to the state, the city and any victim out
7 there. I have eight-and-a-half months sitting in here.
8 I didn't realized -- my situation back on my addiction
9 on methamphetamine, I didn't realize how much -- I'm not
10 only hurting myself, I was hurting my family, the victim
11 or so-called victims from the drug, and my son, I only
12 spent six months with and my two daughters that I
13 haven't even had a chance to meet or hold.

14 I understand that I have to do time. I
15 understand that I need a punishment and to be taken away
16 from the community, but in all reality, you know, as
17 children our decisions are considered mistakes. When we
18 grow up from children being adult, our choices are
19 considered decisions.

20 On my behalf, your Honor, it was a mistake
21 the decision I made of possessing the 29.2 grams of
22 methamphetamine, carrying the gun when I know I probably
23 could have said no and, I guess, risk safety or risk
24 trying to get away from certain people. But instead I
25 just allowed certain people to come back into my life,

18

1 and I apologize to the state and to my family and to
2 everybody.

3 I am ashamed of being here because from
4 leaving California to come over here, I came here to
5 change basically, and I know my actions don't may not
6 seem that way, but I did 15 months of working, I
7 provided for my family without any gang banging, without
8 any contact with certain people. It was my last two
9 months of my marriage and last two months before I got
10 incarcerated everything started going downhill.

11 With that said, your Honor, my life is in
12 your hand in every way possible. I understand I do have
13 to do some prison time, but I ask you to consider
14 rehabilitation or some program, some help due to my
15 addiction other than just incarcerating, throwing me
16 away for the rest of my life for 10, 15 years or life.
17 I think -- I know I could prove myself to the community,
18 to better myself and be a father, a husband and a human
19 being. Thank you.

20 THE COURT: All right. Thank you.

21 Mr. Romo, on your plea of guilty, I find
22 you guilty. In an exercise of my discretion in
23 sentencing, I've considered the Toohill factors,
24 including the nature the offense and the character of
25 the offender, mitigating and aggravating factors and

19

1 information as well.

2 In fashioning a sentence, I do so mindful
3 of the objectives of protecting society, achieving
4 deterrence, the potential for rehabilitation, as well as
5 the need for retribution or punishment. I've considered
6 the PSI materials and I've reviewed those, as well as I
7 am considering the arguments of counsel and the
8 statement of the defendant today.

9 Again, I have reviewed the materials. I
10 think it is apparent, first of all, Mr. Romo, that as
11 far as the what I call the lottery of life goes, it's
12 clear you got a bad draw and that you did not have a
13 loving, supportive environment as every child should
14 have to give them the best opportunity at life. And as
15 you say, the decisions that we make as children are
16 mistakes, some bigger than others, depending upon the
17 circumstances under which we make them.

18 However, as we become adults,
19 notwithstanding what background we have, we become
20 responsible for our decisions, and we have to pay the
21 consequences for those decisions and we also have to
22 learn from those decisions or we face repeating history.

23 I do note that it seems that you made a
24 genuine effort to try to get away from a life of crime,
25 which obviously was not completely successful, it brings

20

1 us where we're at. You know, it's not a negotiation
2 when you bring a gun to the negotiation and you let the
3 other guy know you have a gun, first of all. Whether
4 you pulled the gun out or simply let him see it, it
5 obviously creates an environment that is threatening.
6 Furthermore, as you know, as a convicted felon, you're
7 not supposed to have a gun, to begin with, let alone a
8 gun you know was stolen.

9 And while I accept your statement that you
10 were involved in trafficking methamphetamine basically
11 out of the fear in order to pay debts, nonetheless,
12 there's a consequence to be paid for. There were other
13 options available to you, although you have to put down
14 the criminal code obviously to take advantage of those
15 options, and I don't know that you are ready to do that
16 yet.

17 Until you're ready to do that, until
18 you're ready to address your sobriety -- I think you do
19 want to be sober but you are going to have to address it
20 and take advantage of the tools that you have available
21 to you, and until you're ready to set aside the criminal
22 code, to think of yourself as a law-abiding citizen who
23 is trying to make the best life for himself, rather than
24 somebody who has to act in a way expected of you within
25 that criminal code, until that time, you continue to

21

1 represent a danger to the community.

2 I have said it many times before,

3 trafficking methamphetamine, selling methamphetamine

4 creates just a whole host of victims. People like you,

5 young kids like you without a good start in life who are

6 exposed to the drug and really then have no opportunity,

7 and then who themselves are held responsible for their

8 so-called adult decisions, where those decisions are

9 made in large measure based upon an addiction to

10 methamphetamine; the property crimes and other crimes

11 committed in order to be able to purchase

12 methamphetamine; the crimes of violence that are

13 committed in support of the criminal lifestyle around

14 methamphetamine or in sort of aggravated attempts to

15 gain money to purchase methamphetamine all creates this

16 whole host of victims.

17 Having a gun, having a gun that is stolen

18 victimizes the owner of the gun, but more importantly

19 having a gun as a convicted felon simply puts a degree

20 of dangerousness around yourself and anybody that comes

21 in contact with you because of the potential that, (A),

22 the gun might be used, (B), that law enforcement might

23 be required to use their weapons in confronting you,

24 putting them in danger, as well as putting them in

25 danger of having to potentially shoot you, which is not

22

1 something any officer looks forward to or leaves

2 unscarred.

3 And so that leaves us with where we're at

4 in all of this. I could tack together some sentences

5 using consecutive sentences to come to a sentence that I

6 think is appropriate. I think the easiest way to do it

7 is to give you, particularly in light of the

8 Information Part II as well as what is available to me

9 on Count II, give you concurrent time on all the counts.

10 While I agree this isn't the most

11 egregious of trafficking offenses in the sense that it

12 wouldn't ordinarily result in more than the mandatory

13 minimum on the fixed side, given the other activity in

14 this case and the other criminal contact, I think it

15 does warrant more than the mandatory minimum.

16 So I'm going to sentence you on Count II

17 to a sentence of 20 years, with six years fixed and 14

18 years indeterminate for 20 years. Count III will be a

19 sentence of two years fixed, followed by five years

20 indeterminate. Count IV, one year fixed, followed by

21 four years indeterminate, those to all be concurrent

22 with one another. On Counts V and VI, credit for time

23 served. And Count II as enhanced by the

24 Information Part II.

25 I remand you to the custody of the sheriff

23

1 of the county to be delivered to the proper agent of the

2 State Board of Corrections in execution of the sentence.

3 Credit will be given for the days served prior to entry

4 of the judgment. The court will further order you

5 provide a DNA sample and right thumbprint impression and

6 otherwise comply with the DNA Database Act. I'm going

7 to order the mandatory minimum fine that I'm required to

8 order of \$10,000 on Count II, restitution in the amount

9 of \$100. I'll order that you pay court costs.

10 You have the right to appeal. If you

11 cannot afford an attorney, you can request to have one

12 appointed at public expense. Any appeal must be filed

13 within 42 days of the date of this order or the entry of

14 the written order of judgment of conviction and

15 imposition of sentence.

16 So while it may seem like a long time

17 right now, you do well in prison and you should be out

18 around or after that six-year point. You're still a

19 young man at that point and have a lot of life to live,

20 but you've got that other part hanging over your head,

21 so you're going to have to conform yourself and

22 hopefully you will be able to do that and live the best

23 life that you can.

24 THE DEFENDANT: I understand. Thank you.

25 MR. STELLMON: I may not have paying as good of

24

1 attention, did the court order the no-contact order?

2 THE COURT: I did. Is there objection to it?

3 MS. MARTIN: I don't know that you necessarily --

4 since the state dismissed Count I, I don't know that you

5 necessarily have the jurisdiction to order a no-contact

6 order on that. However, Mr. Romo has no objection to it

7 because he's not going to have to any contact with that

8 person, but if the court feels comfortable doing it.

9 THE DEFENDANT: That's fine with me.

10 THE COURT: Well, he did have the firearm and

11 there was -- the person was subject to the firearm, and

12 so I think I can order it, and there's not an objection

13 to it, so I will order it. I think it's frankly in

14 everybody's best from that you not have contact with him.

15 MR. STELLMON: The state is returning it's copy

16 of the PSI.

17 (Proceedings concluded.)

18 * * *

19

20

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25